

## **CIVIL SERVICE COMMISSION MINUTES**

**June 3, 1998**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin, President  
Roy Dixon, Vice-President  
Mary Gwen Brummitt  
Gloria Valencia-Cothran

Comprising a quorum of the Commission

Larry Cook, Executive Officer  
Ralph Shadwell, Deputy County Counsel  
Joy Kutzke, Reporting

**CIVIL SERVICE COMMISSION MINUTES**  
**June 3, 1998**

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
3,7,8,10,18,19, 20,21	10,18,20		2

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Valencia-Cothran. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda.**

a. Commissioner Valencia-Cothran: Donovan Jacobs, Esq., on behalf of **Richard Eaton** appealing an Order of Suspension from the Sheriff's Department.

b. Commissioner Valencia-Cothran: Michael Seyle, Esq., on behalf of **James Fitzpatrick** appealing an Order of Termination from the District Attorney.

**REGULAR AGENDA**

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of May 6, 1998.

**Approved.**

## WITHDRAWALS

2. Commissioner Austin: **Timothy Zinglar** appealing an Order of Immediate Suspension from the Health and Human Services Agency.

**Withdrawn.**

## CONFIRMATION OF ASSIGNMENTS/REASSIGNMENTS

3. Commissioner Valencia-Cothran as hearing officer in the appeal of **Manuel J. Perez** from an Order of Pay Step Reduction from the Sheriff. Combine this case with previous disciplinary case assigned to Commissioner Valencia-Cothran.

Mr. Gattey addressed the Commission on behalf of **Manuel J. Perez** requesting that the two disciplinary matters not be consolidated. One of the cases falls within the right of representation by the Deputy Sheriff's Association and the other does not. Mr. Gattey and Mr. Ervin, Counsel for the Sheriff, agree that each case will take approximately one-half day. The parties agreed to the scheduling of the cases on the same day at different times.

**Motion by Dixon to not consolidate the cases; seconded by Valencia-Cothran. Carried.**  
**Brummitt - abstained.**

4. Commissioner Austin reassigned as hearing officer in the appeal of **Sylvia Peralta** from an Order of Reduction in Compensation from the South Bay Municipal Court. Commissioner Brummitt previously assigned.

**Confirmed.**

5. Commissioner Brummitt reassigned as hearing officer in the appeal of **Stephen Maier** from an Order of Compulsory Leave from the Sheriff's Department. Commissioner Dixon previously assigned.

**Confirmed.**

6. Commissioner Dixon as hearing officer in the appeal of **Michele Frediani** from an Order of Separation from the District Attorney. This item is continued from the CSC meeting of May 6, 1998.

RECOMMENDATION: Deny request.

**Staff recommendation approved.**

## DISCIPLINARY FINDINGS

7. Commissioner Valencia-Cothran: Donovan Jacobs, Esq., on behalf of **Richard Eaton** appealing an Order of Suspension from the Sheriff's Department.

## FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I -- negligence (accident with County vehicle); and Cause II -- acts incompatible with and/or inimical to public service. Employee admitted the charges set forth in Causes I and II. The sole issue of dispute was the level of discipline. The Department's decision to order a two-day suspension was based on several factors, including prior discipline for similar conduct and the proximity in time of such discipline. The hearing officer concludes that the two-working day suspension (17 hours) imposed on Employee is within the reasonable discretion of the Department and not excessive. The charges described in Causes I and of the Order of Suspension were proven to be true. Therefore, it is recommended that the Order of Suspension and Charges imposed by the Sheriff be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Valencia-Cothran to approve Findings and Recommendation; Seconded by Dixon. Carried.**

## SELECTION PROCESS FINDINGS/COMPLAINTS

### Complaints

8. **Cynthia Delooze** appealing DHR's application denial for the classification of Junior Accountant.

RECOMMENDATION: Deny request.

Ms. Delooze addressed the Commission supporting her position that she is qualified to compete as Junior Accountant. She has been a County employee for 13 years and is currently a Personnel Aide; her duties currently entail the tasks of a Junior Accountant. Ms. Delooze pointed out that the current class specification does not require a degree. She would like the opportunity to be interviewed under the current class specification. She claims she has been performing the duties of a Junior Accountant for the last three years. An update of the qualifications for Junior Accountant is in progress. Blair Provo, on behalf of DHR, responded that Ms. Delooze's current classification is not in the Junior Accountant series. Her previous experience with the County was as an Intermediate Account Clerk, which is in the clerical accountant series. She explained that the degree requirement was recently placed on the job bulletin at the request of the Auditor and Controller. The Auditor and Controller asked DHR to open the job recruitment process for Junior Accountant prior to having the specification formally revised and placing the new requirements on the job bulletin. Commissioner Valencia-Cothran expressed concerns about long-term career employees not receiving credit for work experience when competing for positions requiring degrees. She expressed the need of weighing faithful service to this County and the necessity for technical knowledge. Larry Cook, Executive Officer, commented on the necessity of standards and the need for experts to change the standards periodically.

**Motion by Dixon to approve staff recommendation; seconded by Brummitt. Carried.**  
**Valencia-Cothran — No.**

9. **Arthur V. Juliano, Jr.**, former Deputy Sheriff, appealing DHR's application rejection for the classification of Lateral Entry Deputy Sheriff.

RECOMMENDATION: Deny request.

**Staff recommendation approved.**

10. Deborah Olberding, S.E.I.U. Local 2028, on behalf of **Adell Burge**, an Intermediate Transcriber in the Department of the Public Defender appealing DHR's denial to allow her to compete in the selection process for Criminal Legal Secretary II. (See also No. 20 below.)

RECOMMENDATION: Hold in abeyance pending review and response by DHR.

Ms. Burge addressed the Commission stating that DHR has had sufficient time since the closing of the examination to determine if she should be reinstated to this employment list. She alleged DHR did not give any concrete answers to Robin Low or her as to why she is now unqualified to compete as a Criminal Legal Secretary II (CLSII), when she has qualified in the past. She requested the Commission to grant her a Rule X hearing based on the time DHR staff has taken in deciding whether or not she met the minimum qualifications to allow her to be placed on the CLSII list. Ms. Burge contends that she has been performing Criminal Legal Secretary duties for her department on a daily basis. The job specification and job bulletin for CLS II do not state that in order to qualify an applicant should have worked for one attorney as DHR suggests. She requests Rule VI hearing or at the very least a Rule X hearing.

**Motion by Valencia-Cothran to hold in abeyance pending written response from DHR; seconded by Brummitt. Carried.**

Mr. Cook added that the Department and DHR should be aware that he and Mr. Austin had a discussion regarding this matter subsequent to the Commission's receipt of EOMO's report and Mr. Austin expressed an interest in delving into this further with EOMO. The outcome of that conversation may impact the selection process issue as well as DHR's response to the Commission.

### **Findings**

11. **Edward J. Southcott, Jr.** appeal of removal of his name by DHR from the employment list for Deputy Sheriff for failure to meet the employment standards.

12. **David Robbins** appeal of removal of his name by DHR from the employment list for Deputy Sheriff for failure to meet the employment standards.

13. **Brian Patterson** appeal of removal of his name by DHR from the employment list for Deputy Sheriff for failure to meet the employment standards.

14. **Antonia Ustoy** appeal of removal of her name by DHR from the employment list for Deputy Sheriff for failure to meet the employment standards.

15. **Yvan Rogers** appeal of removal of his name by DHR from the employment list for Deputy Sheriff for failure to meet the employment standards.

16. **Allan DeLeon** appeal of removal of his name by DHR from the employment list for Court Service Officer for failure to meet the employment standards.

17. **Michael A. Piadade** appeal of removal of his name by DHR from the employment list for Correctional Deputy Probation Officer for failure to meet the employment standards.

RECOMMENDATION: Ratify Item Nos. 11 through 17. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item Nos. 11 through 17 ratified.**

## **DISCRIMINATION**

### **Complaints**

18. **Mike Chase** alleging national origin discrimination by the Health and Human Services Agency.

RECOMMENDATION: Allow staff to give verbal input.

Larry Cook, Executive Officer, addressed the Commission regarding the elimination of EOMO, effective July 2, 1998, by the Board of Supervisors. He explained Civil Service Rule VI as it relates to the requirement that the Commission forward discrimination complaints to EOMO. Mr. Chase's matter is the first case received by the Commission since the Board's action. The Commission is faced with complying with the Charter and the Rules (which require the forwarding of discrimination complaints to EOMO) even though the Board has eliminated EOMO. He provided the Commission with several alternatives to accomplish its mandated duty. Mr. Shadwell, Deputy County Counsel, advised the Commission from a legal standpoint. Mr. Cook informed the Commission that Eloy Villa, Internal Affairs Officer, was unavailable to be at today's meeting and that Mr. Arauz, DHR Director, was available by pager. Mr. Villa informed Mr. Cook that County Counsel should be able to answer the Commission's questions because it assisted the Board in the development of the process to eliminate EOMO and the disposition of EOMO's duties. Anthony Albers, Deputy County Counsel, who provided advice regarding

EOMO's abolishment was at the Commission meeting. Option No. 1 -- refer discrimination complaints to the Internal Affairs Office of the Chief Administrative Officer's Office (CAO). The Internal Affairs Office is responsible for receiving any complaint within the County other than complaints that would be designated for anyone else, such as the Commission. The Board's action disbursed duties previously provided by EOMO to various departments within the County. Option 2 -- the Commission may be able to direct Commission staff to conduct investigations depending on time and funding. Option 3 -- the Commission could contract out with an outside source, such as an attorney or former Commissioner depending on funding. Option 4 -- a combination of the above-stated options.

Mr. Shadwell expressed his thoughts regarding the Commission's handling of discrimination complaints with the demise of EOMO. He clarified that he was not involved in the drafting of the ordinance, which repealed the existence of EOMO and that Deputy County Counsel Anthony Albers prepared the ordinance. Mr. Shadwell explained that with respect to the Commission's authority, Rule VI of the Civil Service Rules states that when the Commission receives a complaint alleging discrimination that it "shall" refer the complaint to EOMO for review and report to the Commission. The rule also says that the Commission "may", but need not appoint one of its members or a hearing board or officer to investigate the matter concurrently with EOMO. He explained that EOMO will be out of existence in July, 1998, and it probably does not have the ability to take and complete a report between now and the time it goes out of existence. The Commission cannot refer discrimination complaints to them. The Commission has the authority to appoint one of its members or a hearing board or officer to investigate a matter. To do so would be in compliance with Charter Section 904.2 which says that the Commission appellate authority includes appeals from actions involving "complaints of discrimination in personnel matters based on non-job-related factors". Given that situation, Mr. Shadwell views the potential alternatives stated above, and in Mr. Cook's staff report, a little differently. For example, Option 1 -- "refer discrimination complaints to Internal Affairs". Mr. Shadwell does not believe the Commission can treat the CAO's Internal Affairs as it did EOMO. He advised that, at this point, the Commission has to assign a Commissioner to conduct investigations. The Commission may choose to have an informal working relationship with Internal Affairs to do a concurrent investigation. He does not believe the Commission can treat Internal Affairs as if it were EOMO. Option 2 -- "direct your own staff to conduct investigations". The Commission could appoint one of its staff members to be a hearing officer to investigate the matter; that is a little different than directing staff to conduct its own investigation. Option 3 -- is to contract with an outside source to conduct the investigation; that is authorized under the Rules. Mr. Shadwell referred to the second to the last paragraph of the staff report which states, "In all cases one of your members should be appointed to oversee an investigation as currently provided in Rule VI". Mr. Shadwell shared concerns with that particular language of just overseeing an investigation. He stated that it was appropriate for the Commission to "oversee" as

long as EOMO was in the Civil Service Rules which required the referral of a complaint to EOMO for review and report. Now that EOMO no longer exists, he does not believe that the Commission can appoint someone like Internal Affairs and oversee it. He stated that the Commission, as a hearing board or body, has to appoint someone to do the investigation.

Commissioner Austin discussed concerns of the fiscal implications this would have on the Commission and inquired as to whose budget would be affected. Mr. Cook responded that there had been no discussion in his presence about this subject. He was not aware that the matter was going to be placed on the Board's agenda. Commissioner Austin addressed further concerns regarding the feasibility of the Commission taking on the additional responsibilities of fully investigating discrimination complaints. Commissioner Brummitt added that the Commission needs to seek clarification from the Board of Supervisors as to its expectations. She shared her observation that the Commission is understaffed and relies on outside consultants and attorneys to conduct its regular business. Undertaking an investigative roll without more staff is not possible, and if the Commission is to have more staff it must be funded. Mr. Shadwell added that with the demise of EOMO, Rule VI will have to be revised in some fashion to provide an alternative to EOMO, i.e., if it is amended to say Internal Affairs, the Commission could utilize Internal Affairs in the way that it had used EOMO. He expressed his concern that right now there is a rule that no longer fits the actual facts. Commissioner Valencia-Cothran voiced her opinion viewing EOMO as a different vehicle than Internal Affairs. She stated that due to the fact that EOMO has been eliminated, it is believed that Consent Decree requirements have been fulfilled, and though discrimination will not be ignored, there is no longer a need to keep track as to whether or not individuals are being discriminated against. EOMO assisted the Commission by acting as its investigatory arm, they conducted the interviews and subsequently made a recommendation to the Commission. The Commission would either support the recommendation or choose to have a hearing. She expressed concerns regarding decisions which were made relating EOMO's dissolution and questioned whether there was sufficient input from impacted sources. She agreed that the Commission needs direction from the Board of Supervisors. Commissioner Valencia-Cothran shared her feelings that the CAO's Internal Affairs Office, may be similar to the Internal Affairs unit of the Sheriff's Department, which may have contributed to the establishment of the Citizens' Law Enforcement Review Board (CLERB) to conduct Sheriff's impartial internal investigations. We could end up in a similar situation because we would have Internal Affairs investigating its own people. It did not work with the Sheriff and she does not know if it would work in this instance. She clarified that she is not complaining about the demise of EOMO, but is concerned as to whether the issue of how the Commission will investigate alleged discrimination cases was addressed. Commissioner Austin stated that the Commission must agree to hold in deference all of the items concerning discrimination complaints until clear direction is received from the CAO and/or Board of Supervisors or proceed and



assign someone to investigate the cases at hand. Anthony Albers, Deputy County Counsel, counsel for DHR, addressed the Commission stating that under Rule VI, the Commission has the obligation to investigate internal discrimination complaints, which are in contrast to external complaints that come from DFEH and EEOC. He believes Rule VI evolved some years ago at the time EOMO was established and the Consent Decree came about. It made practical sense from the Commission's standpoint as the primary investigator to ask EOMO, as the Commission's agent, to conduct a preliminary review. EOMO was looking at the County's overall compliance with affirmative action issues and discrimination matters. The Commission still has the primary responsibility to investigate discrimination complaints internally under its Rule. The Commission needs to determine who will assist it in carrying out that responsibility. Mr. Albers stated that the Commission can either take on that responsibility itself, which it has always had the right to do, or it can decide that it needs some other agent to preliminarily help as EOMO has done in past years. Commissioner Brummitt inquired as to who would take the financial responsibility for that. Mr. Albers responded that that is a matter the Commission needs to discuss with the Board of Supervisors. Mr. Albers stated that what the Commission is saying is that if the County is going to provide us with another type of agent to assist it in such matters, and the County may do that, that is a decision by the Board Supervisors and DHR, or is the Commission going to decide that it would prefer to have its own investigator do the preliminary review, or request an individual Commissioner to do a preliminary review. Another issue that will surface is, the effects of the terms and conditions of employment, because this particular Rule was met and conferred about. Mr. Albers stated that, the Commission needs to have some discussion, about how to get to the next step. There are financial, operational and timing issues. He suggested that the Commission needs direction. It may want assistance from Internal Affairs. That does not mean that it takes away from the Commission's responsibility to conduct discrimination investigations. However, if it decides that it does not want to use Internal Affairs, it needs to think of alternatives and it needs some help, it needs to make that point to the Board. Mr. Cook added that through his conversations that there has been very little discussion, at least that was brought to his attention, regarding these issues. Mr. Cook spoke to Mr. Villa about this and he was very willing to take on the responsibility of investigations. Mr. Cook's impression from Mr. Villa was that there has not been discussion as to what the Commission should be doing. He believes that if there was any discussion it was more like Internal Affairs is willing to do it and that the Commission would just turn it over to them. The stumbling block that we are at has not been considered. As Mr. Shadwell pointed out, Internal Affairs cannot just do it like EOMO. It must include the Commission's involvement. Commissioner Austin added that the Commission needs to sit down with Internal Affairs and go over the procedures. What would be involved if is going to be the agency that takes on EOMO's roll? The Commission needs to alert the appropriate parties as to the additional costs.

Motion by Valencia-Cothran defer discrimination Item 18 and possibly 20 until the June 17, 1998 CSC meeting, and in the interim we will make every effort to get in contact with the CAO's office to find out as much as we can about how they intend and how we would like to proceed with discrimination complaints; seconded by Dixon. Carried.

Motion by Dixon to direct Larry Cook, Executive Officer, and Gordon Austin, President, CSC, to initiate a meeting first with Mr. Arauz and Mr. Villa as to what their perception is of what the Board of Supervisor's and CAO's direction is in this matter and to express to Mr. Arauz and Mr. Villa the concerns of the Commission, the legal obstacles as presented by Mr. Shadwell, and seek direction. Following that meeting, seek a meeting with the CAO on the same subject and have an answer back to the Commission by the June 17, 1998 meeting; seconded by Valencia-Cothran. Carried.

### Findings

19. **Larry Barker** alleging sex, age, race, national origin/ancestry discrimination and retaliation by the Health and Human Services Agency.

#### FINDINGS AND RECOMMENDATIONS:

The complaint was forwarded to EOMO for investigation and report back to this Commission. The report of EOMO has been received and reviewed by this Investigating Officer, who concurs with the findings that Larry Barker failed to establish allegations of age, sex, race, national origin/ancestry discrimination or retaliation; and that probable cause that a violation of discrimination laws occurred in this matter was not established. Therefore, it is recommended that Larry Barker's complaint be denied and the Commission approve and file this report with the appended EOMO Investigative Summary Report with a findings of no probable cause that the complainant has been discriminated against on any basis protected by law.

**Motion by Valencia-Cothran to approve Findings and Recommendations; seconded by Dixon. Carried.**

20. Deborah Olberding, S.E.I.U., Local 2028, on behalf of **Adell Burge**, an employee in the Department of the Public Defender alleging union affiliation discrimination by the Department of the Public Defender. (See also No. 10 above.)

#### FINDINGS AND RECOMMENDATIONS:

Ms. Burge addressed concerns regarding Rule VI issues relating to discrimination in hiring, promotions and discipline in the work place in our County. She expressed concerns that employees will no longer be afforded an administrative remedy with EOMO. She asserts that without an impartial third party to investigate claims, our County administration will undoubtedly face many more merit and disciplinary issues whose complainant will opt to bypass the CAO's Internal

Affairs review and instead elect to pursue immediate litigation. That is what it appears our Board of Supervisors wants. Ms. Burge pointed out concerns using the CAO's Internal Affairs Office as an investigatory agency due to conflicts of interest. She relayed various alleged intimate and social associations the current Internal Affairs Officer had/has with other County employees and the impact those relationships could have on the outcome of investigations. She believes S.E.I.U. feels that the current Internal Affairs Officer is unqualified to handle merit issues. She requests Rule VI hearing or at the very least a Rule X hearing. Mr. Cook reminded the Commission that our office has not yet asked for a DHR response to the Rule X issue. He explained that the Rule X issue was held in abeyance pending receipt of EOMO's report which was recently received by the Commission. He recommended that the Commission give DHR an opportunity to respond. Blair Provo, addressed the Commission on behalf of DHR, indicating she had previously prepared a written response prior to the matter being deferred pending EOMO's investigation. Mr. Cook clarified that DHR's former response does not contain input which was addressed in EOMO's recent report and believes it would be helpful to give DHR the opportunity to review said report and provide an updated response to the Commission.

**Motion by Valencia-Cothran to hold EOMO's report in abeyance pending Commissioner Austin's meeting with EOMO and report back to the full Commission; seconded by Dixon. Carried.**  
**Commissioner Austin - abstained.**

#### **CITIZEN COMPLAINT**

21. **Dr. Gregory Ferguson** citizen's complaint regarding treatment he received by an employee of the Health and Human Services Agency.

RECOMMENDATION: Note response from the Health and Human Services Agency. Take no further action.

Dr. Ferguson addressed the Commission regarding the treatment he received by an employee of the Health and Human Services Agency while applying for general relief. Suzanne Maczyck responded on behalf of the Agency apologizing for any perceived mistreatment he received from the employee. Dr. Ferguson was not able to produce the required documentation to avail him of their services at the time of application.

**Motion by Valencia-Cothran to approve staff recommendation; seconded by Brummitt. Carried.**

#### **OTHER MATTERS**

##### **Extension of Temporary Appointments**

22. Health and Human Services Agency

- A. 5 Residential Care Worker I's (Shane Johnson, Mary Finley, Vivienne Tally, Krystal Kemmerle, Cathy Burns)
- B. 2 Residential Care Worker Trainees (Elizabeth Vasquez and Ericka Ellis)
- C. 1 Residential Care Worker II ( Louise Seavey)

23. Assessor/Recorder/County Clerk

- A. 1 Division Chief I, Assessor (Joan Brookman)

24. CAO - MEDIA/PUBLIC RELATIONS

- A. 1 Video Production Specialist II (Joe A. Solazzo)

RECOMMENDATION: Ratify item Nos. 22 through 24.

**Item Nos. 22 through 24 ratified.**

25. Ratification of Roberto Netter, Ph.D., Bilingual Psychologist and John David Goodman, M.D., Gastroenterologist, as additional names to the list of medical and psychological providers to be used for fitness for duty evaluations at the request of the Department of Human Resources.

RECOMMENDATION: Ratify providers.

**Item No. 25 ratified.**

26. Public Input.

There was additional discussion relating to item No. 21 above, clarifying the presence of witnesses at the time Dr. Ferguson sought assistance. Dr. Ferguson stated there were no witnesses present at the time of his incident and the department previously indicated that there was. Commissioner Brummitt sought clarification from the Department. Ms. Maczyck stated that there are witnesses, that clients do not see in order to maintain the integrity of applicants and monitor the behavior of Eligibility Technicians; supervisors are nearby. The client does not always necessarily see a witness.

ADJOURNMENT: 4:40 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE June 17, 1998.**